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March 28, 1994

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BY HAND

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: Telephone and Data Systems, Inc. --  
CC Docket No. 94-11

Dear Mr. Caton:

Enclosed for filing on behalf of Louisiana CGSA, Inc.,  
are an original and six copies of its Response to Motion for  
Modification of Issues and Caption.

Please contact us should you have any questions regard-  
ing this filing.

Sincerely,

WILKINSON, BARKER, KNAUER & QUINN

*L. A. Tollin*

By: L. Andrew Tollin  
Luisa L. Lancetti

Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Application of  
TELEPHONE AND DATA SYSTEMS,  
INC.

CC Docket No. 94-11

For Facilities in the  
Domestic Public Cellular  
Telecommunications Service  
on Frequency Block B in  
Market 715, Wisconsin 8  
(Vernon) Rural Service Area

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MAR 28 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Honorable Joseph P. Gonzalez  
Administrative Law Judge

LCGSA RESPONSE TO MOTION FOR  
MODIFICATION OF ISSUES AND CAPTION

Louisiana CGSA, Inc. ("LCGSA") <sup>1/</sup>, by its attorneys, hereby responds to the Motion for Modification of Issues and Caption ("Motion") filed by Telephone and Data Systems, Inc. ("TDS") and United States Cellular Corporation ("USCC") (collectively "TDS/USCC") on March 17, 1994. By this filing, TDS/USCC seek to modify the designated issues and caption in the instant proceeding to substitute "Wisconsin RSA # 8, Inc." in place of TDS.

For the reasons discussed herein, LCGSA does not object to a simple addition to the caption and second designated issue to reflect the name change involving the Wisconsin RSA Number 8 ("Wisconsin 8") applicant. LCGSA does object, however, to TDS's attempt to remove its name from identification in this proceeding and thereby distance

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<sup>1/</sup> LCGSA is a subsidiary of BellSouth Corporation.

itself from the character qualifications issue designated against it. The Presiding Officer should reject TDS's transparent effort to limit the impact of the proceeding.

TDS/USCC cite, as grounds for the proposed substitution, the fact that on February 21, 1992, the Commission approved an assignment of the Wisconsin 8 authorization (KNKN459) from TDS to Wisconsin RSA # 8, Inc., a wholly-owned subsidiary of TDS. Then, on May 19, 1992, the Commission approved a transfer of control of Wisconsin RSA # 8, Inc. to USCC.<sup>2/</sup> On this basis, TDS/USCC seek to change the caption and issue in the case.<sup>3/</sup>

Under the guise of a clerical correction, however, TDS/USCC are clearly attempting to do something of substance here. They are trying to limit the potential impact of the instant character qualifications determination to Wisconsin RSA #8, Inc. only, despite explicit language to the contrary in the Memorandum Opinion and Order and Hearing Designation Order ("HDO").<sup>4/</sup>

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<sup>2/</sup> USCC is also a wholly-owned TDS subsidiary.

<sup>3/</sup> Motion at 1. TDS/USCC have given no reason why they did not seek to "correct" matters sooner. Indeed, they have filed appearances and a number of other pleadings in this proceeding. Specifically, on February 18, 1994, TDS and USCC filed their Notices of Appearance. On March 11, TDS and USCC filed a Petition for Stay of Proceedings with the full Commission. On March 11, TDS and USCC filed a Motion for Continuance of All Procedural Dates. On March 15, TDS and USCC's counsel appeared at the pre-hearing conference held before Judge Gonzalez. Thereafter, on March 17, TDS/USCC filed an Opposition to Petition to Intervene.

<sup>4/</sup> 59 Fed. Reg. 7673 (Feb. 16. 1994).

Thus, while the name of the Wisconsin 8 applicant may have changed through a pro forma assignment and transfer, this does not change the fundamental nature of the inquiry to be undertaken, or the nature of the parties involved in this proceeding. Wisconsin RSA # 8, Inc. is owned by TDS and there has been no change in the ultimate ownership or control of the applicant. The Commission clearly indicated in the HDO its intent to examine the overall qualifications of TDS to be a Commission licensee:

[W]e . . . designate for hearing character issues concerning a TDS subsidiary's conduct before the Commission and whether this calls into question TDS's qualifications as a Commission licensee.

\* \* \*

If USCC [a TDS subsidiary] misrepresented facts or lacked candor, this calls into question USCC's, and its parent TDS's, qualifications to be Commission licensees.

\* \* \*

[W]e have determined that a substantial and material question of fact exists whether TDS is qualified to be a Commission licensee. . . . <sup>5/</sup>

This case involves an inquiry into TDS' (and USCC's) character qualifications and not a narrow inquiry merely into whether Wisconsin RSA #8, Inc. is fit. This point is underscored by the fact that USCC's conduct in the La Star

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<sup>5/</sup> HDO at ¶¶ 1, 33 (emphasis added).

Cellular Telephone Co. <sup>6/</sup> case is actually the subject matter being explored in the instant proceeding. <sup>7/</sup> For this reason, the Commission has been conditioning license grants to TDS and its subsidiaries on the outcome of this case; the character findings reached herein will not be relitigated in those other cases when the conditioned license grants are revisited. <sup>8/</sup> Simply put, TDS/USCC's efforts to distance themselves from the instant inquiry should be rejected.

Moreover, the Motion appears to be part of a larger effort to limit the possible consequences of any adverse determination reached herein. Despite the Commission's clear statements that TDS's qualifications are at issue in this proceeding, and that a decision herein will impact other FCC grants involving TDS and its subsidiaries, TDS/USCC have stated otherwise to its FCC partners, and

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<sup>6/</sup> 6 FCC Rcd. 6860 (ALJ 1991), aff'd, 7 FCC Rcd. 3762 (1992), appeal pending sub nom. Telephone and Data Systems, Inc. v. FCC, Case Nos. 92-1291, 92-1294 (D.C. Cir.).

<sup>7/</sup> The HDO recounts at length a specific example of a candor issue raised by the testimony of USCC's President in the La Star proceeding.

<sup>8/</sup> See HDO at ¶ 34 n.61:

[T]he Bureau has been conditioning all grants to TDS, or any of its subsidiaries, of licenses for new facilities, modification of facilities, and consent to acquire licensed facilities by assignment or transfer upon the final resolution of the issues mentioned in [La Star] footnote three. Any further grants to these entities will also be conditioned on the outcome of this proceeding.

presumably to the public. In recent correspondence sent by USCC to its partners -- as to whom it has fiduciary duties -- USCC specifically indicated that:

The [Wisconsin 8] hearing does not involve any FCC license other than the Wisconsin RSA # 8 license. Therefore, the outcome of the Wisconsin 8 hearing will not affect any other FCC license held by TDS or USCC . . . . <sup>9/</sup>

This statement ignores the fact that 1) the HDO specifically refers to an examination of the qualifications of TDS and USCC to be Commission licensees; <sup>10/</sup> and 2) footnote 61 of the HDO expressly states that past and future FCC grants to TDS and its subsidiaries are and will be conditioned on the outcome of this proceeding. <sup>11/</sup>

To the extent that TDS/USCC are truly interested in only correcting the record to reflect the correct applicant, LCGSA submits that this can be accomplished by a simple addition to the caption and designated issue number (2) as follows: "Telephone and Data Systems, Inc., through its subsidiary Wisconsin RSA # 8, Inc." This would avoid any confusion as to the identity of the Wisconsin 8 applicant, but would still confirm that it is the character qualifications of TDS which are being reviewed in the

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<sup>9/</sup> See attached correspondence sent to USCC partners, dated March 15, 1994, Attachment A. The name and address of the USCC partner to whom the correspondence was sent has been redacted at its request.

<sup>10/</sup> HDO at ¶ 33.

<sup>11/</sup> Id. at ¶ 34 n.61.

context of the instant proceeding. LCGSA submits that the elimination of TDS from the caption and second designated issue would be misleading and not reflect the true nature of the case.

For the reasons stated herein, LCGSA urges the Presiding Officer to retain TDS as a named party in the caption and in designated issue number (2) in this proceeding. <sup>12/</sup>

Respectfully submitted,

LOUISIANA CGSA, INC.

By:   
L. Andrew Tollin  
Luisa L. Lancetti

WILKINSON, BARKER, KNAUER & QUINN  
1735 New York Avenue, N.W.  
Washington, D.C. 20006  
(202) 783-4141

Dated: March 28, 1994

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<sup>12/</sup> By Motion for Leave to Intervene, filed by Wisconsin RSA # 8, Inc. on March 17, 1994, the nominal applicant has sought to separately intervene as of right in this proceeding. (The filing was made by TDS and USCC's attorneys.) LCGSA respectfully requests that the Presiding Officer take this opportunity to confirm that TDS and its wholly-owned subsidiaries represented here will be required to file joint submissions. There is no basis for separate filings by these commonly owned entities.

UNITED STATES  
**CELLULAR**  
MOBILE TELEPHONE NETWORK

March 15, 1994

Re: FCC Hearing Designation Order  
with Respect to Wisconsin RSA #8

Dear

We are writing this letter to our partners in order to address the above-captioned order which was released by the Federal Communications Commission (the "FCC") on February 1, 1994. The order did two things:

First, the FCC affirmed, for the third time, that Telephone and Data Systems, Inc. ("TDS") did not violate FCC rules in connection with its application for the Wisconsin RSA #8 FCC authorization (which TDS won in the lottery).

Second, the FCC rescinded TDS's authorization in Wisconsin RSA #8 and ordered that a hearing be held to review the conduct by representatives of TDS's cellular subsidiary, United States Cellular Corporation ("USCC"), in an unrelated matter, the "LaStar proceeding", which is currently on appeal, to the U.S. Court of Appeals for the District of Columbia.

The purpose of the hearing is to determine if USCC "misrepresented facts, lacked candor in its dealings with, or otherwise attempted to mislead the FCC" in the LaStar proceeding. If the FCC were to find that this was the case, it could levy a fine of up to \$1.0 million dollars and/or require USCC to divest itself of control of the Wisconsin RSA #8 license.

The hearing does not involve any FCC license other than the Wisconsin RSA #8 license. Therefore, the outcome of the Wisconsin 8 hearing will not affect any other FCC license held by TDS or USCC or by any FCC licensee in which TDS or USCC has an interest. Whether an adverse outcome in the Wisconsin 8 hearing will give rise to separate hearings with respect to any other FCC license in which TDS or USCC has an interest has been the subject of some speculation, primarily by certain attorneys and other persons seeking to profit from this situation. Since neither TDS



nor USCC believe there was any attempt to mislead the FCC in any way whatsoever, they believe such speculation is motivated by self-interest and is unfounded. In any event, even an adverse outcome should not affect any FCC license or licensee in which TDS or USCC holds a non-controlling investment interest.

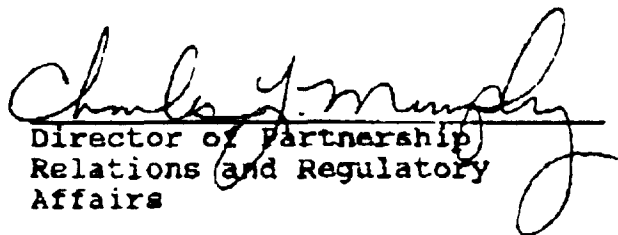
The FCC Hearing Designation Order has raised a question about USCC's candor with the FCC in connection with the LaStar proceeding, and TDS and USCC are taking it seriously. The matter is currently in the hands of the FCC. TDS and USCC are confident that the integrity of the FCC and its procedural safeguards will result in the exoneration of TDS and USCC when the facts are presented. TDS and USCC will, of course, cooperate with the FCC in this fact-finding hearing and look forward to an early resolution of the matter.

TDS issued a press release shortly after the FCC Opinion and Order came out. Subsequently, TDS distributed an Information Summary, which provided some additional background to the recent FCC action. The Information Summary has been well received and we feel it has helped put the Hearing Designation Order in its proper perspective. A copy of the Information Statement is enclosed for your reference. We hope a review of the enclosed Information Summary will answer any questions you may have or which may have been suggested to you by others.

Since 1982, TDS has been a vocal advocate for the full and equal participation in the cellular industry by independent telephone companies. Before the hearing is concluded, TDS and USCC may need the active support of some of the independents who joined with them in filing for cellular authorizations. TDS and USCC look forward to your support. In the meantime, should you have any questions regarding this matter, please don't hesitate to call the undersigned at (312) 399-8900.

UNITED STATES CELLULAR CORPORATION

By:

  
Director of Partnership  
Relations and Regulatory  
Affairs

Corporate Office  
30 North LaSalle Street  
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**Telephone and  
Data Systems, Inc.**

## **INFORMATION SUMMARY**

### **LASTAR**

In 1983, a joint venture named LaStar Cellular Telephone Company was formed by an affiliate of LaFourche Telephone Company, Inc., located in southern Louisiana, and Maxcell Telecom Plus. SJI Cellular, Inc. (the LaFourche affiliate), owned 51% of the stock of the joint venture and Maxcell owned 49%.

In September 1983, LaStar filed an application for St. Tammany Parish in north New Orleans. The FCC dismissed LaStar's application in favor of an application filed by New Orleans CGSA, Inc. (NOCGSA), a BellSouth Mobility subsidiary. LaStar appealed the FCC's decision to the United States Court of Appeals, which ruled in favor of LaStar and ordered the FCC to reinstate LaStar's application.

In August 1987, a subsidiary of USCC became the sole owner of a corporation that had succeeded to Maxcell's 49% interest in LaStar, as part of a larger transaction in which USCC acquired other properties from Maxcell. In connection with the acquisition, USCC assumed Maxcell's rights and obligations under the joint venture agreement.

In May 1990, the FCC designated a comparative hearing to determine whether LaStar or NOCGSA should be awarded a construction permit for St. Tammany. USCC was initially denied status as a party in this proceeding. This meant that USCC representatives were presented as LaStar witnesses by LaStar counsel. USCC representatives were represented by USCC counsel only to give advice, make objections and in some cases, ask clarifying questions. However, USCC counsel was not permitted to examine or cross-examine witnesses or introduce its own evidence.

Approximately three months after the hearing was completed, USCC was admitted as a party. At that time it was permitted to submit a written addition to the record, which it did. Thereafter, NOCGSA, in its submission of proposed findings to the administrative law judge, alleged a lack of candor on the part of the principals of USCC and SJI with respect to whether USCC rather than SJI was actually in control of LaStar. The administrative law judge did not adopt NOCGSA's request for those findings.

In June 1992, the FCC affirmed the administrative law judge's Initial Decision granting the NOCGSA application. That FCC order was appealed by USCC and LaStar to the United States Court of Appeals for the District of Columbia Circuit. The court held argument on October 18, 1993, and the case awaits the court's decision.

In the appeal to the full Commission of the administrative law judge's Initial Decision, NOCGSA raised exceptions to the administrative law judge's decision not to make any findings as to candor. The FCC, in Footnote 3 in its decision, ruled that the issue of candor was moot. It went on to say that: "Questions regarding the conduct of SJI and USCC in this case may be revisited in light of the relevant findings and conclusions here in future proceedings where the other interests of these parties have decisional significance."

Since the LaStar proceeding, FCC authorizations to USCC and certain of its affiliates have been granted subject to any subsequent action the FCC may take concerning Footnote 3 in the LaStar case. In February 1993, USCC filed a petition to have Footnote 3 of the FCC's opinion deleted. In response, the FCC issued the Hearing Designation Order with respect to Wisconsin RSA No. 8.

### WISCONSIN RSA NO. 8

In March 1989, TDS won the lottery for Wisconsin 8. In November 1989, the FCC staff granted the license to TDS over the objections of a group of other applicants. TDS placed the cellular system in service and subsequently assigned the license and operations to a USCC subsidiary. Administrative appeals were taken by the other applicants. In the opinion released February 1, 1994, the FCC denied those objections to the grant of Wisconsin 8 to TDS/USCC for the third time.

Further, the FCC set aside the Wisconsin 8 license and granted TDS interim authority to continue to operate the Wisconsin 8 cellular system pending completion of the LaStar hearing. The FCC wants to determine whether or not in the LaStar case "USCC misrepresented facts to, lacked candor in its dealings with, or attempted to mislead the FCC" and, if so, whether or not "TDS possesses the requisite character qualifications to hold the Wisconsin 8 license." The FCC stated that, pending resolution of the LaStar hearing, subsequent authorizations to TDS and its subsidiaries will be conditioned on the outcome of that hearing.

### CONCLUSION

TDS believes that USCC was candid in its dealings with the FCC and did not misrepresent facts or attempt to mislead the FCC. TDS believes that TDS and USCC will be successful in the proceeding and that TDS will be held to be fully qualified to be the licensee of Wisconsin 8. TDS looks forward to the proceeding as an opportunity to satisfy the FCC.

**CERTIFICATE OF SERVICE**

I, Jo-Ann Grayton, certify that I have on this 28th day of March, 1994 caused copies of the foregoing "Response to Motion for Modification of Issues and Caption" to be sent to the following by first-class mail, postage pre-paid:

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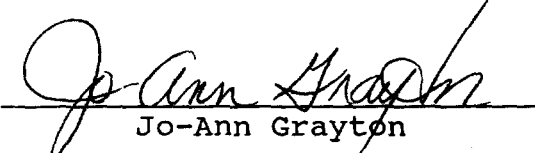
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\* Hand Delivered